

STATE BOARD OF PUBLIC SCHOOL EDUCATION

MINUTES OF SPECIAL MEETING

May 28, 2020

Members of the State Board of Public School Education met via Microsoft Teams on Thursday, May 28, 2020. The special meeting was called to order by Dr. Brian Duchscherer at 1:01 PM. The following State Board members were in attendance virtually for the meeting:

Ms. Maria Effertz Hanson

Mr. Josh Johnson

Dr. Steve Holen

Mr. Jeff Fastnacht

Ms. Sonia Meehl

Superintendent Kirsten Baesler

Dr. Brian Duchscherer

Also present: Allyson Hicks, Alice Johnson, ALJ Timothy Dawson, Aryn Mappes, Brandon Mappes, Mark Vollmer, Matt Norby, James Vannett, Jackie Kathrein,

APPROVAL OF MINUTES

Ms. Effertz Hanson moved that the minutes of the May 18, 2020 meeting be approved. Mr. Johnson seconded the motion. Motion carried unanimously.

CONTINUE HEARING, DISCUSS, AND TAKE ACTION ON THE FOLLOWING ANNEXATION (MAPPE PETITION):

At 1:05 PM the meeting was turned over to Administrative Law Judge Timothy Dawson for the continuation of the hearing on the Mappes Annexation. Judge Dawson explained that since this was a continuation of an earlier proceeding he would not repeat all of the Century Code citations but reminded everyone that this was a hearing and that since the meeting was being held via Teams that anyone who spoke would need to make sure that they identified themselves so that it would be in the record. He also reminded everyone of the penalties for perjury and that all witnesses would be sworn in.

The first witness to be sworn in was Jodi Johnson, Ward County Superintendent of Schools. Ms. Johnson reviewed the annexation packet. She told the board that there are two things that make this annexation different than other annexations submitted from Ward County. She called the board's attention to page nine of the annexation packet where the county reorganization committee elected to use North Dakota Century Code §15.1-12-08 and attach the bonded indebtedness of the district the

petitioners were being detached from, Nedrose, along with the bonded indebtedness of the district they were being attached to, Minot. The meeting also went over a calendar year – Ward County held the county hearing on November 20, 2019, so Jodi included an extra page in the FOF that outlined any differences in the mil levies or taxable valuations from one calendar year to the next.

Judge Dawson called for testimony in support of the annexation. Aryn Mappes was sworn in to testify on behalf of she and her husband. Mrs. Mappes went over the family's reasons for choosing the property when they purchased it, including its proximity to the Minot Air Force Base, where she works. Mrs. Mappes has been working as a civilian on the MAFB since 2009. Her husband, Brandon, works in the oil field and has a two weeks on/ two weeks off schedule so is gone for half the year or more. The Mappes have two children, Brayden and Owen. Aryn further testified that growing up she attended many different schools.

Aryn testified that Brayden has been referred by his pre-school teacher for testing for special education services at Nedrose school but that it had been put on hold. He has no academic concerns but does have potential behavior and special needs concerns that his preschool teacher felt should be addressed. While waiting for the annexation to be decided the Mappes enrolled Brayden in Bright Path, an occupational and physical therapy group in Minot. Evaluations were completed and Bright Path believes that Brayden would benefit from their occupational services for his specific behaviors.

Mrs. Mappes has done research at both Nedrose and Lewis and Clark Elementary in Minot and believes that the environment at Lewis and Clark would be a better fit for Brayden.

Mrs. Mappes spoke about the couple's son Owen, who was born with cranial stenosis. Owen has been enrolled with ND Human Services and the Minot State University Early Intervention Education program and has monthly visits to monitor. Owen will eventually need speech services.

Mrs. Mappes spoke about the educational opportunities that were available in the Minot Public School system and shared that there were several programs that both she and her husband had found to be very beneficial to them in their educational experiences in Minot schools.

Mrs. Mappes testified that she had filled out tuition waiver paperwork for Minot Public Schools but that did not guarantee which school Brayden would be able to attend. She further testified that, although the option was there to fill out tuition waivers every year, their desire to have their children be able to remain in the same school from year to year was one of the major factors in their decision to petition for annexation.

Mrs. Mappes concluded her testimony with a brief statement about concerns that a friend who had attended Nedrose chose not to send her children there because of her experiences there.

Judge Dawson swore Mr. Mappes in to hear his testimony. Mr. Mappes expressed his support for his wife's testimony and added that he had moved around a lot growing up and that he was able to complete

his four years of high school at Minot and that the education he received there in his four years of schools was substantially better than the education he'd received in the years leading up to high school moving from Air Force base to Air Force base.

Judge Dawson called for testimony from any other supporters of the annexation.

Dr. Mark Vollmer, Superintendent of Minot Public Schools, was sworn in by Judge Dawson.

Superintendent Vollmer expressed his appreciation for the Board's willingness to hold this hearing remotely. He shared that he had sent written testimony when this matter was to be heard before the Board the first time and further expressed that he was going to use that same testimony in today's proceedings. Dr. Vollmer stated that this annexation had been heard before the Ward County Reorganization Committee previously and was approved 5-0 with a caveat that was concerning to him and that was that the Mappes family would be held responsible for the bonded indebtedness of both districts during the duration of the bonding term. He went on to say that Minot Public Schools does not question the legality of the Ward county committee to offer such a solution, they do question the long term implications of this decision. Superintendent Vollmer goes on to say that on many occasions others have offered testimony that annexation is an unfair process as it limits the district of origin to meet bonded indebtedness obligations by taking that taxable valuation off the rolls. He further testified that he's heard on other occasions that annexation is unfair as it "ties the hands of individuals who may wish to purchase that property in the future". This verbiage has also been shared by members of the Board of Public School Education as they've debated either the approval or disapproval of annexations as presented. Dr. Vollmer asked the Board to consider those statements as they apply to this situation and goes on to say that he believes that the annexation does "tie the hands" of an individual who would wish to purchase the Mappes property in the future if they would purchase it in a time period where existing bonded indebtedness still existed in the Nedrose district, the purchaser would be responsible for debt, in addition to the existing debt of bonded indebtedness of the Minot School District, which is essentially double taxation and could be claimed as "taxation without representation". Dr. Vollmer testified further that he has concerns about how the county auditor's office might be able to determine the amount to be paid to the district of origin and how this could be done equitably by a county office that is already burdened with an expectation to provide on time tax statements with a high degree of accuracy.

Dr. Vollmer expressed that he did not envy the Board for the decision that they were being asked to make and went on to say that he would like to warn of the long term implications that surround this decision, for example, if double taxation becomes the standard operating procedure to approve annexations, will annexation become an avenue only to be pursued by a family with the financial resources available to consider annexation as an option. Secondly, how will this affect resale of the property that has been annexed? Lastly, can double taxation be reported through realty offices fairly and

equitably so potential buyers are aware of this unique taxing structure?

Dr. Vollmer wrapped up his testimony by stating that he still believes that the best litmus test for determining the validity of any annexation request solidly rests in our existing state law, ND Century Code §15.1-12-05(4). The primary question is whether the Mappes have met the letter of the law in their petition. He goes on to say that in his opinion the collection of taxes in multiple school districts, while allowable under the state law, only confuses the primary issue – that being, what is best for the Mappes family? I encourage you to provide full consideration how this decision may have long term consequences for those who wish to explore annexation as defined in the previously referenced ND Century Code as a legal remedy, the only legal remedy, by the way, to address the educational processes that affect our most valuable resources – our children.

Judge Dawson called on the Board for any questions that they may have for Dr. Vollmer. Superintendent Baesler requested the written testimony of Dr. Vollmer, submitted at the prior meeting, be shared with Board members. Judge Dawson allowed that and marked the testimony of Dr. Vollmer as Exhibit 2 for purposes of the hearing.

Ms. Meehl asked Dr. Vollmer whether he supported or opposed the annexation. He replied that he was in support of the annexation and apologized if he did not make that clear. He went on to say that he did, however, have concerns with the component that much of his testimony centered around and that is the issue of double taxation. Ms. Meehl went on to say that it was unclear to her whether or not the Board had the authority to change that part of the petition that applied to taxation and asked Dr. Vollmer if his support for the annexation would change depending on whether or not the Board had any power to change that part of the petition. He stated that he still supported the petition but did say that at the end of the day, he had issue with the process. He added that after conversations with the business manager in Minot, he was not certain that at the time that the Mappes were in complete understanding of the taxation situation. Dr. Vollmer went on to say that he is always worried about precedent.

Mr. Fastnacht had several questions for Dr. Vollmer regarding his views on the legalities of this issue. His first concerned what the county committee did with regards to ND Century Code §15.1-12-08 and whether Dr. Vollmer viewed that as legal and secondly did he feel that the Mappes had followed the legal requirements for this petition. Dr. Vollmer answered that the Mappes had absolutely followed the guidelines and done exactly what they needed to do. Dr. Vollmer reiterated that the county did not do anything wrong but that his concern is that if this becomes the litmus test, that if a petitioner can afford to pay bonded indebtedness in two school districts and then will be allowed to be annexed in, then that becomes onerous and in a brief conversation with the court house it was thought that these calculations would have to be manually done. He again stated that although it was legal, he did not feel that it was a direction that the state wanted to go in.

Dr. Duchscherer asked Allyson Hicks, General Counsel for the State Board, for clarification that the petition before the Board had to be either approved or denied, but not modified in any manner. Ms. Hicks confirmed that was correct. She stated that this hearing was being conducted under ND Century Code §15.1-12-056A and that the Board was given the option of either approving the petition before them or denying it but that the Board does not have the ability to modify it.

Dr. Vollmer asked the Board for the opportunity to clarify his intent with regards to supporting or opposing the annexation. He reiterated that Minot Public Schools stands in favor of this annexation.

Judge Dawson called for any opponents of the annexation who wished to testify to identify themselves.

Matt Norby, Nedrose Public School Superintendent, was first to be sworn in to testify in opposition. Superintendent Norby testified that Nedrose Public Schools sees this annexation as mainly a matter of convenience and that the Nedrose Public School is able to provide a quality education for the Mappes children. He further testified that there are other avenues to take to access Minot Public Schools such as applying for a tuition waiver, which the Mappes have already done for the upcoming school year. He went on to say that he appreciated the work of the Ward County Reorganization Board in looking at a solution for the taxpayers of the Nedrose district. When the bond issue to build a new school in Nedrose was being considered the property in question was a part of the district and that has big implications on trying to pass a bond. He expressed the concern that annexations from the Nedrose district were continuing to put extra tax burdens on the taxpayers in the district.

Mr. Fastnacht questioned Superintendent Norby about his opposition to this annexation as the county board did allow for the double indebtedness. Superintendent Norby's response was that there was an expiration date to that bonded indebtedness and that after that date there would be no more revenue from this property coming to the Nedrose district.

James Vannett, Nedrose School Board President, testified in opposition of the Mappes petition. In addition to the issues that Mr. Norby testified regarding, Mr. Vannett addressed several other issues, the first being cameras and security concerns of the Mappes. He acknowledged that with regards to the Mappes comments about ITV classes and in person opportunities that you couldn't beat in person instruction. He challenged the Mappes' concerns about bus safety and went on to say that he believed that school satisfaction in the Nedrose district was good.

With no further opposition, Judge Dawson asked for any further testimony.

The Board asked for Aryn Mappes to be recalled. Mr. Fastnacht wanted clarification from Mrs. Mappes that she and her husband had full understanding of the taxation implications of their petition after the action by the county committee. Mrs. Mappes replied that they did understand. She further testified that at the county meeting they did not fully understand what that meant but that she was afraid that if she said she didn't understand or was opposed to the condition that the committee would deny her

annexation. Mrs. Mappes testified that after the hearing she did some “homework” and then discussed with her husband whether or not they could afford the additional tax burden and decided that if it meant their children being able to receive the services they felt were necessary and the opportunities they wanted for their children then they were willing to pay for that.

Mr. Fastnacht asked for Jodi Johnson to be recalled and asked her to help provide some clarity regarding the actions of the county committee and their decision to handle this annexation this way. He stated that he was under the assumption that the Mappes had full knowledge of the taxation issue when they made their application but has come to realize that was likely not the case. Ms. Johnson testified that in the past, the county committee has historically just made the petitioner responsible for the indebtedness of the district they are attaching to, not the district that they are detaching from. She went on to say that it was at this point in the county meeting, when the people get to speak and testify and then the county goes through the findings of fact and makes permanent changes, that the change was made – after testimony. Mr. Fastnacht expressed concern that a county board could, in essence, change the intent of a petition after receipt of an application for annexation.

With no further testimony, Judge Dawson closed the evidentiary hearing at 2:04 PM and returned the meeting to the chair, Dr. Duchscherer.

The State Board members reviewed the Findings of Fact, Conclusions of Law, and Order completed by the Ward County Reorganization Committee, for the annexation of property from the Nedrose Public School District No. 4 of Ward County in North Dakota to the Minot Public School District No. 1 of Ward County in North Dakota. (Mappes petition).

A motion was made by Ms. Meehl to approve the annexation of property from the Nedrose Public School District No. 4 to the Minot Public School District No. 1 based on the following findings of fact:

- 1) The annexation was approved at the county level by a vote of 5-0
- 2) The per student taxable valuation of the petitioned property is reasonable
- 3) The annexation involves one family and one lot

The motion was seconded by Ms. Effertz Hanson.

Results of roll call vote:

Dr. Holen – yes

Ms. Effertz Hanson – yes

Superintendent Baesler – yes

Mr. Johnson – yes

Ms. Meehl – yes

Mr. Fastnacht – yes

Dr. Duchscherer – yes

Motion carried unanimously.

Dr. Duchscherer called a recess at 2:41 PM.

The meeting was reconvened at 2:50 PM with Vice Chair Sonia Meehl in charge of the remainder of the meeting. All members except for Dr. Duchscherer were still present at the meeting

REVIEW COUNTY COMMITTEE PACKET FOR DISSOLUTION OF CENTRAL ELEMENTARY SCHOOL DISTRICT NO. 32 OF SLOPE COUNTY AND ITS ATTACHMENT TO BOWMAN COUNTY SCHOOL DISTRICT NO. 1 AND NEW ENGLAND SCHOOL DISTRICT NO. 9

The State Board members reviewed the packet presented by the county committee for the dissolution of Central Elementary School District No. 32 and its attachment to Bowman County School District No. 1 and New England School District No. 9.

County Superintendent Designee of Slope County, Jackie Kathrein, was present and answered some questions from the Board.

Mr. Johnson made a motion to approve the dissolution of Central Elementary School District No. 32 based on the following:

- 1) The low number of students in the district
- 2) Enrollment number of students in adjacent districts
- 3) There were no students enrolled in Central Elementary in 2018-2019
- 4) The educational opportunities available in adjacent districts
- 5) The dissolution was approved by a vote of 3-0 at the county level
- 6) The taxable valuation was reasonable

The motion was seconded by Ms. Effertz Hanson.

Results of roll call vote:

Superintendent Baesler – yes

Ms. Effertz Hanson – yes

Mr. Johnson – yes

Mr. Fastnacht – yes

Dr. Holen – yes

Ms. Meehl – yes

Motion carried unanimously.

Ms. Effertz Hanson and Dr. Holen left the meeting at this point.

REVIEW, DISCUSS, AND TAKE ACTION ON THE REORGANIZATION OF THE GRAFTON SCHOOL DISTRICT NO. 3 AND THE ST. THOMAS SCHOOL DISTRICT NO. 43

The State Board members reviewed the reorganization plan as presented the Grafton and St. Thomas School Districts.

A motion was made by Mr. Fastnacht to approve the reorganization plan and to send it to the voters of the Grafton and St. Thomas School Districts.

The motion was seconded by Superintendent Baesler.

Results of roll call vote:

Mr. Fastnacht – yes

Superintendent Baesler – yes

Mr. Johnson - yes

Ms. Meehl – yes

Motion carried unanimously.

Next Regular Meeting: Monday, June 15, 2020

There being no other business brought before the board, the meeting adjourned at 4:05 PM.